



California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

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21 November 2008

Mr. Russ Holcomb
Malaga County Water District
3580 South Frank Street
Fresno, CA 93725

CERTIFIED MAIL
7007 3020 0000 1750 0378

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, MALAGA COUNTY WATER DISTRICT WWTF, FRESNO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) that have occurred at the Malaga County Water District (District) Wastewater Treatment Facility (WWTF) in Fresno County. The Complaint charges the District with civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of the mandatory minimum penalties for effluent limitation violations that occurred at the WWTF during the period of 1 February 2004 through 13 March 2008.

On 10 July 2008, staff issued the District a Notice of Violation and draft Record of Violations of Mandatory Minimum Penalties (MMPs) for the period of 1 February 2004 through 30 April 2008. By 18 September 2008 letter, the District acknowledged the identified violations. Staff has since changed the end of review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board adopted WDRs Order R5-2008-0033 and rescinded WDRs Order 99-100. This change reduced the civil liability from fifteen thousand dollars to nine thousand dollars.

On 5 August 2008, staff requested that State Water Board staff evaluate the District to determine the District's eligibility for designation as a small community with financial hardship. On 21 August 2008, staff received a memorandum from the Executive Director of the State Water Board confirming that the District's WWTF is a publicly owned treatment works serving a small community with financial hardship within the meaning of CWC section 13385(k)(2). Therefore, the Central Valley Water Board may entertain proposals from the Discharger to have all or a portion of the assessed penalty applied to the construction of a compliance project designed to rectify within five years the conditions that led to the violations.

Pursuant to CWC section 13323, the District may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **30 December 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board, which may include proposals for the penalty to be applied towards a compliance project pursuant to CWC section 13385(k), and request that any hearing on the matter be

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delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it, along with a letter stating the issues to be discussed, to this office by **30 December 2008**; or

- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the District chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period of public notice, during which time interested parties may comment on this action by submitting information to this office, attention Jill Walsh. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver **by 30 December 2008**, then a hearing will be scheduled for the **5/6 February 2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Jill Walsh, **no later than 5 p.m. on 30 December 2008**. This includes material submitted by the District to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 30 December 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Jill Walsh at (559) 445-5130 or Jo Anne Kipps at (559) 445-5035.

LONNIE M. WASS
Supervising Engineer

Enclosure: ACL Complaint R5-2008-0583

See next page for cc list

cc w/ encl: Ms. Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova

Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento
Fresno Environmental Health Department, Fresno